

Appln No. 10/723,817
Amdt date April 14, 2008
Reply to Office action of January 16, 2008

REMARKS/ARGUMENTS

The above identified patent application has been amended and reconsideration and reexamination are hereby requested.

Claims 1-20, 24 and 25 are now in the application. Claims 21-23 have been cancelled. Claims 1, 10, 14, 18 and 25 have been amended.

The Examiner has rejected claims 18-20 under 35 U.S.C. §102(a) as being anticipated by Applicant's admitted prior art (APA).

The Applicant's amended claim 18 calls for, in part (underlining added for emphasis): "wherein each of the pair of gate poles is attached to one spaced upright support member to allow the gate to be free to open and close without interference from the tension of the mesh fencing."

In rejecting claim 18, the Examiner noted that "the use of the claimed pole with a gate has only been recited as intended use within claim 18; no specific structural features have been positively claimed that define a gate or which limit the use of the pole to function only with a gate." *Office action*, p. 2. Applicant submits that claim 18 has been amended to indicate that each of the pair of gate poles is attached to one spaced upright support member to allow the gate to be free to open and close without interference from the tension of the mesh fencing, thereby positively claiming specific structural features to define the gate and limit the use of the gate pole to function only with a gate. Applicant further submits that APA does not teach each of the pair of gate poles is attached to one spaced upright support member.

Accordingly, the Applicant submits that claim 18 is not anticipated by APA under 35 U.S.C. §102(a).

Claims 19 and 20 are dependent on claim 18. As such, these claims are believed allowable based on claim 18 for at least the reasons above and for the additional limitations they contain.

The Examiner has rejected claims 1-8, 10-12, and 14-26 under 35 U.S.C. 103(a) as being obvious over Sadinsky et al (U.S. 5,664,769) in view of APA.

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The Applicant's amended claim 1 calls for, in part (underlining added for emphasis): "support means capable of withstanding lateral tension forces of the screen for supporting and latching the gate, the support means comprising at least a first pole of the plurality of poles attached to one of the spaced upright support members on one side of the gate and a second pole of the plurality of poles attached to the other of the spaced upright support members on another side of the gate."

The Applicant's amended claim 10 calls for, in part (underlining added for emphasis): "each pole of the plurality of poles attached to one of the pair of spaced upright support members."

The Applicant's amended claim 14 calls for, in part (underlining added for emphasis): "fabricating a gate including a pair of side rails, each side rail of the pair of side rails attached to one of the first and last poles of the plurality of poles."

The Examiner indicates that Claims 1 and 10 do not "positively recite that the first and second poles of the support means each comprises one of the plurality of poles including an insert and a pin, nor does claim 1 positively recite that the first and second poles are directly attached to upright support members of the gate." *Office action*, p. 5, 9. The Applicant submits that claims 1 and 10 have been amended to indicate that each of the first and second poles include an insert and a pin and are directly attached to upright support members of the gate.

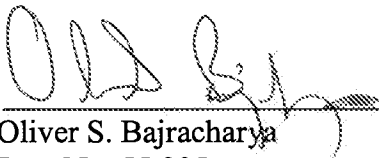
Sadinsky teaches a pair of poles on each side of a gate, the poles themselves being inserted into a pool decking to isolate a gate from fence tension. APA teaches pins attached to the end of the poles, the pins having a smaller diameter than the poles. Since the pins have a smaller diameter than the poles, it was thought that the pins would decrease the stability of the gate and would not provide enough isolation from fence tension to the gate. As such, poles with pins have not been used at or near gate structures because of stability concerns. Accordingly, since it is counterintuitive to create a tension free gate by reducing the size of the member inserted into the pool deck, it would not have been obvious for one of ordinary skill in the art to make the larger pole member (as taught by Sadinsky) into a smaller pin member (as taught by APA) to provide an adequately tensioned gate.

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The Applicants submit that all of the limitations as claimed in claims 1, 10 and 14 are neither present in the APA and Sadinsky references, nor are an obvious result from a reasonable combination of their teachings. Accordingly, the Applicant submits that the invention claimed in claims 1, 10 and 14 is patentable over Sadinsky in view of APA.

In view of the above amendment and remarks, Applicant submits that the claims are patentably distinct over the prior art and that all the rejections to the claims have been overcome. As such, allowance of the above Application is requested.

Respectfully submitted,
CHRISTIE, PARKER & HALE, LLP

By 
Oliver S. Bajracharya
Reg. No. 55,905
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